

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE**

JOHN STEPHEN FARMER
3537 Deerwood Avenue
Memphis, Tennessee 38111-5409

Plaintiff,

v.

**NATIONAL TRANSPORTATION
SAFETY BOARD**
490 L'Enfant Plaza, SW
Washington, DC 20594-0001

and

U.S. DEPARTMENT OF JUSTICE
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

and

U.S. DEPARTMENT OF TRANSPORTATION
1200 New Jersey Ave, SE
Washington, DC 20590

Defendants.

COMPLAINT FOR INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act, 5 U.S.C § 552, for injunctive and other appropriate relief and seeking the disclosure and release of agency records improperly withheld from plaintiff by defendant National Transportation Safety Board ("NTSB"), defendant Department of Justice ("DOJ") and its component the Federal Bureau of Investigation ("FBI"), defendant Department of Transportation ("DOT") and its component the Federal Aviation Administration ("FAA").

Jurisdiction and Venue

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This court also

has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

3. John Stephen Farmer is the organizer and operator of a political action group known as Blue Collar Republican ("BCR") located in Memphis, Tennessee. BCR's activities include the operation of an internet blog and news service for working Americans, www.bluecollarrepublican.com. As part of its online activities, BCR maintains a website, www.aal77.com devoted to providing primary historical documents to the public-at-large related to American Airlines Flight 77 ("AAL77") which impacted the Pentagon in Arlington, Virginia on September 11, 2001. This collection of documents is available free-of-charge and obtained in-part from government sources via the Freedom of Information Act.

4. Defendant NTSB is a Department of the Executive Branch of the United States Government. The NTSB is an agency within the meaning of 5 U.S.C. § 552(f).

5. Defendant DOJ is a Department of the Executive Branch of the United States Government, and includes component entity FBI. The DOJ is an agency within the meaning of 5 U.S.C. § 552(f).

6. Defendant DOT is a Department of the Executive Branch of the United States Government, and includes component entity FAA. The DOT is an agency within the meaning of 5 U.S.C. § 552(f).

Government Agencies' Acquisition of the AAL77 Flight Data Recorder

7. On September 14, 2001 the Washington Post reports that the "black boxes", flight data recorder ("FDR") and cockpit voice recorder ("CVR") belonging to AAL77 were located by the FBI Evidence Response Team. This report was based on statements made by Arlington assistant county manager Dick Bridges. The time of recovery was given as 3:40 am on September 14, 2001. Leef Smith, *Black Boxes Located in Pentagon Rubble*, Washington Post, September 14, 2001 9:21 am, available at <http://www.washingtonpost.com/ac2/wp-dyn/A29466-2001Sep14?language=printer>.

8. On September 14, 2001 the Public Broadcasting System ("PBS") Online News Hour reports that the "black boxes" had been "recovered at about 4 a.m. and are now being reviewed at a National Transportation Safety Board laboratory in Washington." The PBS report was more specific as to the location of the recovery. "Bridges said the recorders were found 'right where the plane came into the building.'" *FLIGHT DATA AND VOICE RECORDERS FOUND AT PENTAGON*, PBS, September 14, 2001 1:00 pm, available at http://www.pbs.org/newshour/updates/september01/wash_9-14.html.

9. The NTSB acknowledges receipt of a solid state flight data recorder identified as a Loral Fairchild Model F-2100 in "support of the FBI's investigation into the terrorist act of American Airlines Flight 77" on September 14, 2001. The memory

module was removed by the NTSB and its contents transcribed to a hard disk at their Vehicle Recorders Division. *Specialist's Factual Report of Investigation Digital Flight Data Recorder, DCA01MA064*, NTSB, January 31, 2002.

Government Agencies' Releases of the AAL77 FDR Data

10. American 77.fdr, a binary file 25,165,994 bytes in size with an electronic file creation date of September 14, 2001 12:45 am. This file requires aviation industry specific software to decode and read the data. The flight data recorder records a serial bit stream consisting of binary 1's and 0's. This data is recorded at a rate of 3072 bits per second and in the case of AAL77, for 5257 seconds. This represents 2,018,688 bytes of actual serial bit data. The serial bit stream was recovered from the FDR by software identified by the NTSB as Readout and Playback Software ("RAPS") from Flightscape, Inc. This file does not represent the serial bit stream file recorded on the FDR but is rather an encoded representation of it. *DCA01MA064, FOIA #2007-0285*, June 11, 2007

11. AAL77_tabular.csv, a comma-delimited file 19,619,840 bytes in size with an electronic file creation date of January 29, 2002 12:10 pm. The NTSB states that this file was created from the American 77.fdr file. *FOIA #2007-0318A*. This file may be opened with any standard text software or with Microsoft Excel for viewing of the data values. It is limited in nature and does not include all of the parameters recorded by the FDR. Further, the data values have been adjusted by the NTSB to reflect at a minimum time values. *FOIA #2007-0285*, June 11, 2007

12. *AAL-77 Animation with ATC text*, a DVD animation 3,498,211,328 bytes in size. The NTSB states that this animation was created from the American 77.fdr file. The cover letter provided by the NTSB with this release noted that it was a "working copy" never used for official purposes. It further noted only one known error, "Instead of 'EDT (Eastern Daylight Time),' the time provided on the animation should say, 'UTC (Universal Coordinated Time).'" *FOIA #2007-0285*, June 11, 2007

Government Agencies Documents and Data Related to the AAL77 Flight Path

13. *Flight Path Study--AA77*, NTSB Office of Research and Engineering dated February 19, 2002. This report cites the FDR and various radar data sources, among which is described as the "U.S. Air Force 84th Radar Evaluation Squadron" ("84 RADES") and FAA. *FOIA #2007-0285*, June 11, 2007

14. Emails and correspondence between the NTSB and 911 Commission staff regarding time difference issues between the FDR and 84 RADES data. *FOIA #2007-0318*, August 6, 2007

15. *Multiple Aircraft Incidents 11 Sept 01*, a data CD created for the FBI by 84 RADES dated 13 Sept 01. Included on this CD is a cover letter addressed to the FBI describing the capabilities of the radar sites used, the data from those sites, and the

specialized software to view and extract the raw radar data into various common formats.
 FOIA, October 3, 2007

16. A historical record released by the Department of Defense resulting from Operation Noble Eagle includes a floor plan that indicates the recovery location of the FDR and CVR. It indicates the location of recovery near the exit hole generated by AAL77 debris. *Pentagon 9/11*, Alfred Goldberg, Historical Office, Office of the Secretary of Defense, 2007, page 21

Issues with the Government Agencies' AAL77 FDR Acquisition and Data

17. There are different accounts as to the location and time of the FDR recovery. The media reports indicate a recovery location at or near the impact location at the Pentagon on September 14, 2001 at 3:40 am. The file creation date of the American 77.fdr file indicates it was created from the FDR serial bit stream data at 12:45 am on that date, almost 3 hours prior to the reported recovery time. Differences in daylight savings time would impact the time only by ± 1 hour. When the time to transport the FDR to the NTSB facility from the Pentagon, physical evaluation at the facility, retrieval of the memory module from the FDR, then the time disparity between the file creation time and media reports becomes more evident. Other historical accounts place the location of recovery at the exit hole rather than at the initial impact area.

18. The three released versions of the FDR data indicate a final altitude, once corrected for barometric pressure, in excess of 400 feet above-ground-level ("agl") at one second prior to impact with the Pentagon. This correction is confirmed valid by the radar altitude data in a readout ("RO2") of the American 77.fdr file done by non-government researchers. This altitude would have resulted in AAL77 completely missing downed light poles along the flight path and flying over the impact zone at an altitude in excess of 100 feet agl if the reported impact time is accurate. This alone has led to wild speculation in the public domain that AAL77 did not impact the Pentagon, and is presented by some as evidence of a "fly-over".

19. Two of the released versions, American 77.fdr RO2 and AAL77_tabular.csv, indicate a final true heading of approximately 60 degrees. The *AAL-77 Animation* however indicates a true ground heading much greater (approximately 20 degrees greater) which would result in AAL77 missing the downed poles along the final flight path completely and inconsistent with the damage observed at the Pentagon. The animation indicates an end-of-data at approximately one second prior to impact and a location almost directly above Washington Boulevard on the west side of the Pentagon. This discrepancy has further fueled speculation of a "fly-over".

20. The final recorded position indicated by the AAL77_tabular.csv is N38°52', W077°25'. The final recorded position in the RO2 of the American 77.fdr is N38°52', W077°05'. The actual impact location is at N38°52', W077°03'. The differences are striking in that the AAL77_tabular.csv indicates a final position 22' west of the Pentagon, and 20' west of the RO2 position. The RO2 position is significantly closer to

the impact site, but would have still required 4 – 6 seconds at its final speed to have reached the impact location. The FDR is designed to record flight parameters at one second intervals and should have recorded positional data until the final second of flight. The 84 RADES data indicates a final confirmed radar position for AAL77 at 13:37:12 (UTC) at N38°51', W077°6'. Emails between the NTSB and the 911 Commission staff indicate that there is a -25.3 second time difference between the 84 RADES time and the time used by the Federal Aviation Administration ("FAA"). The position indicated at the closest equivalent RO2 time (FAA time) of 13:37:37 (UTC) is N38°51', W077°6', which corresponds to the 84 RADES position at the equivalent time.

21. If the RO2 position values are matched to the 84 RADES position values, the altitude and other values begin to correspond with eyewitness accounts in the media and *Pentagon 9/11* DOD historical account, and correspond with the flight path indicated by a graphic included in *Flight Path Study--AA77* on page 5. The final position indicated by this graphic however indicates 4 – 6 seconds of flight remains until impact which is unaccounted for in the three released FDR data releases.

Records Required to Resolve the Issues with the Government Agencies'
AAL77 FDR Acquisition and Data

22. The evidence logs related to, and photographs of the FDR recovery by the FBI Evidence Response Team.

23. Videos in the possession of the FBI taken into custody shortly after the attack. These have already been identified and released in-part as the result of a previous FOIA judicial review. *S. Bingham v. U. S. Department of Justice*, No. 05-0475 (PLF), (D.D.C. 2006). Such videos often contain secondary evidence to corroborate the flight path. For example, a large shadow on the ground and flashes of light at the time AAL77 passed the Citgo station operated by the U.S. Navy located on Joyce Rd, Arlington, VA in the vicinity of the Pentagon were captured on the security video released in 2006.

24. The original serial bit stream used to generate the three NTSB data releases as identified in the *Flight Path Study--AA77* and *DCA01MA064* documents. The FDR is a digital type manufactured by L3 Engineering and is designed to store flight parameters in a bit data form consisting of binary 1's and 0's. This binary data is stored as a serial bit stream on a solid state chip flash memory module in the FDR.

"Prior to recording, the serial data stream is compressed using a modified Hoffman encoding scheme. The data can be decompressed and restored to the original ARINC 575/717 format without any data loss. This requires the use of specialized manufacturers or equivalent software."

DCA01MA064, page 3

All three of the work products are software interpretations of this serial bit stream. This stream was released in the case of TWA Flight 800 in the form of a waveform file (.wav) and is an acceptable representation of the serial bit data.

25. The NTSB records of their receipt of the FDR and handling of the FDR serial data stream (contained in the solid state memory module) as required to be kept under the Archival Administration Act (44 U.S.C. § 2101, et seq.) and the Records Management by Federal Agencies Act (44 U.S.C. § 3101, et seq.).

26. The FAA radar data from the Washington, D.C. and Pentagon vicinity referred to in the *Flight Path Study--AA77* document. This data includes data from Air Route Surveillance Radar ("ARSR") and the Terminal Radar Approach Control ("TRACON") ASR-9/-11 antennas located at Dulles and Reagan International Airports referenced in the 911 Commission Report. The shortcoming of the 84 RADES data is that it is limited to 12 second radar sweeps and the closest radar site to the Pentagon is located at The Plains, Virginia. During the final seconds of flight, local terrain interferes with the ability of the The Plains site to acquire a return. The FAA TRACON data from Dulles and Reagan is a 4.7 second sweep and in the case of Reagan is not obstructed by local terrain. Also, the TRACON data from Andrews Air Force Base control tower would have an unobstructed sweep.

Over-Riding Public Interest for Records Sought

27. The records sought only confirm and clarify facts already entered into the public domain through law enforcement spokespersons, media outlets, or prior court proceedings. Under the government's theory of events, AAL77 was hijacked by five Al-Qaeda terrorists as described by the 911 Commission Report. Under this theory of events, neither the suspects nor planners of the attack had access to the FDR prior to, during or after the attack. Release of these records would do no harm to any active investigation under this theory of events. The records only serve to establish the final flight path of AAL77 and recovery of the FDR, both of which have a significant historical value and serve the public interest. *DOJ v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989)

28. The purpose of the FOIA is to permit the public to decide for itself whether government action was proper. Due to the ambiguity and conflicting evidence regarding the government's acquisition and possession of the FDR there is an over-riding public interest in the records sought. *Int'l Bhd. of Elec. Workers, Local No. 41 v. Dep't of Hous. & Urban Dev.*, 763 F.2d 435, 436 (D.C. Cir. 1985)

29. The NTSB has provided three work products based on the records sought and presented them to the public and their elected representation, the United States Congress. Public review of these work products by non-government researchers and aviation professionals has determined that each reports a different flight path during the final seconds of AAL77's flight. The records sought are critical to non-government and public oversight and review of the government's efforts. *Citizens for Environ. Quality, Inc. v. Dep't of Agric.*, 602 F. Supp. 534 (D.D.C. 1984)

The FBI's Failure to Timely Comply with Plaintiff's Request for Seized Videos

30. In early-2007 plaintiff submitted an FOIA by letter requesting specific videos known to be in the custody of the FBI relating to the attack on the Pentagon on September 11, 2001. These videos had already been the subject of a prior judicial review by the United States District Court for the District of Columbia. *FOIA #1078686-000*

31. On August 16, 2007 plaintiff was notified by letter that the request was forwarded to the "perfected backlog".

32. On November 16, 2007 plaintiff was notified by letter that the request was forwarded to the "perfected backlog".

33. On November 26, 2007 plaintiff was notified by letter that the request was forwarded to the "perfected backlog".

34. Plaintiff has exhausted the applicable administrative remedies with respect to its FOIA request with the FBI.

35. The FBI has wrongfully withheld the requested records from plaintiff.

The FBI's Failure to Timely Comply with Plaintiff's Request for Sheraton Hotel Video

36. Spring of 2007 plaintiff submitted an FOIA by letter requesting a copy of the Sheraton Hotel (Columbia Pike, Arlington, VA) security video tape seized by the FBI on September 11, 2001. This video had been described by a specific media account;

"A security camera atop a hotel close to the Pentagon may have captured dramatic footage of the hijacked Boeing 757 airliner as it slammed into the western wall of the Pentagon. Hotel employees sat watching the film in shock and horror several times before the FBI confiscated the video as part of its investigation.

It may be the only available video of the attack. The Pentagon has told broadcast news reporters that its security cameras did not capture the crash." Bill Gertz and Rowan Scarborough, *Inside the Ring*, September 21, 2001, *available at* <http://www.pentagonresearch.com/Inside%20the%20Ring.htm>

And confirmed to exist by plaintiffs own research and visit to the Sheraton Hotel area in early-April of 2007. *FOIA #1078866-000*

37. On May 21, 2007, the FBI notified plaintiff by letter that no such record could be located.

38. Upon appeal, plaintiff confronted the DOJ by letter with the results of field research and was informed by letter on September 4, 2007 that another search would be conducted. *FOIA Appeal #07-1721*

39. Plaintiff has exhausted the applicable administrative remedies with respect to its FOIA request with the FBI.

40. The FBI has wrongfully withheld the requested records from plaintiff.

Plaintiff Denied by NTSB Chain of Custody Documents Request

41. On June 27, 2007 plaintiff submitted an FOIA request for "all records pertaining to the recovery of and production of the comma-delimited file" for AAL77 by letter. Plaintiff specifically requested "chain-of-custody, interdepartmental memorandums, emails, and other documents related to this work product." *FOIA #2007-0318*

42. On August 6, 2007, plaintiff received from the NTSB by letter copies of emails and documents relating to radar time discrepancies and issues not related to the request.

43. On August 12, 2007, plaintiff filed an administrative appeal by letter seeking these documents.

44. Joseph Osterman, NTSB Managing Director responded to plaintiff by letter that no documents existed related to the recovery of the FDR or chain-of-custody. He also stated that the NTSB handled the AAL77 data on behalf of the FBI in support of its investigation and was not the lead agency in the matter. *FOIA Appeal #2007-0318A*

45. Plaintiff has exhausted the applicable administrative remedies with respect to its FOIA request with the NTSB.

46. The NTSB has wrongfully withheld the requested records from plaintiff.

Plaintiff Denied by FBI Request for AAL77 FDR and CVR Evidence Logs and Related Documents

47. In August, 2007 the plaintiff submitted an FOIA by letter requesting copies of the AAL77 evidence logs, documents and emails specific to the FDR and CVR recovery. *FOIA #1091569-000*

48. On September 11, 2007 plaintiff was notified by letter that the FBI denied the request invoking 5 U.S.C. § 552(b)(7)(A).

49. On November 8, 2007 plaintiff was notified by letter that an administrative appeal affirmed the denial. *FOIA Appeal #08-0019*

50. Plaintiff has exhausted the applicable administrative remedies with respect to its FOIA request with the FBI.

51. The FBI has wrongfully withheld the requested records from plaintiff.

Plaintiff Denied by FBI Request for Photographs of Recovered Debris

52. In August, 2007 plaintiff submitted an FOIA by letter requesting photographs of the AAL77 recovered debris. *FOIA #1091570-000*

53. On September 11, 2007 plaintiff notified by letter that the FBI denied the request invoking 5 U.S.C. § 552(b)(7)(A).

54. On November 8, 2007 plaintiff notified by letter that an administrative appeal affirmed the denial. *FOIA Appeal #08-0017*

55. Plaintiff has exhausted the applicable administrative remedies with respect to its FOIA request with the FBI.

56. The FBI has wrongfully withheld the requested records from plaintiff.

Plaintiff Denied by FBI Request for Evidence Logs

57. In August, 2007 plaintiff submitted an FOIA by letter requesting copies of the AAL77 evidence logs. *FOIA #1091568-000*

58. On September 11, 2007 plaintiff notified by letter that the FBI denied the request invoking 5 U.S.C. § 552(b)(7)(A).

59. On November 8, 2007 plaintiff was notified by letter than an administrative appeal affirmed the denial. *FOIA Appeal #08-0018*

60. Plaintiff has exhausted the applicable administrative remedies with respect to its FOIA request with the FBI.

61. The FBI has wrongfully withheld the requested records from plaintiff.

The FAA's Failure to Timely Respond to Plaintiff's Request for Radar Data

62. On August 8, 2007, plaintiff submitted an FOIA by letter to two FAA FOIA offices. One was submitted to the FAA Headquarters located at 800 Independence Avenue, SW, Washington, DC 20591, and the other to the FAA Eastern Service Area located at 1701 Columbia Avenue, P.O. Box 20636, Atlanta, GA 30320. Both requests were for primary return radar data for AAL77 and other air traffic in the vicinity of the

Pentagon on September 11, 2001, specifically from radar facilities at Dulles and Reagan International Airports.

63. To date, plaintiff has not received a response from the request submitted directly to the FAA Headquarters.

64. On August 15, 2007 plaintiff was notified by Gary C. Bonds by letter that the request submitted to the FAA Eastern Service Area contained a typo, listing the incident date as September 11, 2007 instead of 2001 and provided a fax number to submit a corrected request to.

65. Plaintiff faxed a corrected request to the number provided by Bonds and on August 16, 2007 was notified by letter that a number had been assigned to the request and had been assigned for action to the FAA Headquarters. *FOIA #2007-6970*

66. On August 21, 2007 plaintiff was notified by letter acknowledging receipt of the referral from the FAA Eastern Service Area.

67. On January 15, 2008 plaintiff sent an email to the FAA FOIA Service Center requesting an update on the status of this request. To date there has been no response.

68. Plaintiff has exhausted the applicable administrative remedies with respect to its FOIA request with the FAA.

69. The FAA has wrongfully withheld the requested records from plaintiff.

Plaintiff Denied by FAA Request for Andrews AFB Radar Data

70. On December 18, 2007 plaintiff requested by letter to the FOIA Officer at Andrews Air Force Base, "information about radar data from the base approach radar system for September 11, 2001." *FOIA #08-054*

71. On January 24, 2008 plaintiff was notified by TSgt Rica P. Taylor, USAF via email, that the request was being referred to the FAA FOIA Service Center. Plaintiff informed TSgt Taylor that there was already a request in with the FAA for the Dulles and Reagan International Airports approach radar data and that this request was for the military approach radar data.

72. On January 24, 2008 plaintiff was advised by an email from the FAA FOIA Coordinator that "These referrals will not be processed, as you also submitted a request to the FAA for radar track data, FOIA 2007-6970." Plaintiff responded via email that the two requests were for different records and no response has been received from the FAA to-date.

73. On January 25, 2008 TSgt Taylor responded to questions from the plaintiff clarifying custody of the records sought.

“I did contact our Andrews Tower and although we're a military installation, all the activities conducted via air in Andrews AFB are under the control of the FAA. The staff at the FAA informed me that all the data they have during 11 Sep were collected from Andrews AFB and that any request for those records will have to go through the FAA FOIA Regional processing center.”

74. Plaintiff has exhausted the applicable administrative remedies with respect to its FOIA request with the FAA.

75. The FAA has wrongfully withheld the requested records from plaintiff.

Plaintiff Denied by FAA Request for Andrews AFB ATC Recordings

76. On December 18, 2007 plaintiff requested by letter to the FOIA Officer at Andrews Air Force Base, “information about the Air Traffic Control Tapes for Andrews Air Force Base, MD during September 11, 2001.” *FOIA* #08-055

77. On January 24, 2008 plaintiff was notified by TSgt Rica P. Taylor, USAF via email, that my request was being referred to the FAA FOIA Service Center. Plaintiff informed TSgt Taylor that there was already a request in with the FAA for the Dulles and Reagan International Airports approach radar data and that this request was for the military ATC recordings for September 11, 2001.

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80. Plaintiff has exhausted the applicable administrative remedies with respect to its FOIA request with the FAA.

81. The FAA has wrongfully withheld the requested records from plaintiff.

Plaintiff Denied by NTSB Request for Serial Bit Data

82. On December 19, 2007 plaintiff submitted an FOIA request on the NTSB FOIA Request website specifically requesting the “raw data file (stream) recovered from the flight data recorder of American Airlines Flight 77 which crashed into the Pentagon on September 11, 2001. That file is a raw binary (serial bit file) and NOT the RAPS encrypted file released by the NTSB.” Explicitly, a waveform representation of the file would be acceptable, but any form of the original file in discernable bit form (1’s and 0’s) would satisfy the request. *FOIA #2007-00045*

83. On January 8, 2008, plaintiff was notified by the NTSB by letter asserting “we do not have a record of the information you seek.”

84. On January 17, 2008, plaintiff filed an administrative appeal seeking this record. The basis of the appeal was that three data products have been released by the NTSB which are work products utilizing the serial bit stream file, and it had to exist for the work products to have been produced. The appeal specifically stated, “Records of this original record are required to be kept under the Archival Administration Act (44 U.S.C. § 2101, et seq.) and the Records Management by Federal Agencies Act (44 U.S.C. § 3101, et seq.). Under the Disposal of Records Act (44 U.S.C. § 3301, et seq.), any destruction of the record is required to be fully documented. As such, if the record (not the work products) has been destroyed or otherwise disposed of, then I am requesting that full disclosure of the records required under these Acts be provided as in *Jefferson v. Reno*, 123 F. Supp. 2d 1 (D.D.C. 2000).”

85. Plaintiff has exhausted the applicable administrative remedies with respect to its FOIA request with the NTSB.

86. The NTSB has wrongfully withheld the requested records from plaintiff.

Pattern of Intentional Evasion and Non-Compliance

87. Plaintiff sought from the NTSB documents related to the production of the animation work product for AAL77 which would address specific issues such as grid alignment, dimensions, and other aspects that indicated a greater true heading than indicated in the AAL77_tabular.csv work product. Plaintiff was informed by letter on July 5, 2007 that the NTSB would not respond to questions regarding their work products, including the animation. *FOIA #2007-0285A*

88. Plaintiff understands from a December 20, 2007 telephone conversation with Tamara Crawford, NTSB FOIA Requester Service Center, is that the actual FDR is in the possession of the FBI. The serial bit stream is the data stored on the FDR solid state memory module. It is unclear to the plaintiff whether a waveform of the serial bit

stream was created by the NTSB while the FDR was in their possession or whether they retained possession of the solid state memory module containing the serial bit stream.

89. The NTSB admits in the *DCA01MA064* document on page 3 that the encoded version of the serial bit stream requires “the use of specialized manufacturers or equivalent software” not available to the public-at-large. The serial bit stream is represented by voltage transitions over a given time interval, which can be examined by anyone with simple audio or other readily available public domain waveform software. Examination of this waveform can reveal alterations or problems with the collection of the data. Further, the frame structure can be reconstructed and quantitatively compared against the work products. A request for this format of the file is lawful and provided for under the 1996 Electronic Freedom of Information Amendments (“EFOIA”). 5 U.S.C. § 552(a)(3)(B). Since the NTSB has released this waveform version for other flights of great public interest, not doing so in this case indicates to the plaintiff an effort to conceal from the public aspects of the final seconds of AAL77’s flight by the NTSB.

90. Neither the FBI nor the NTSB will respond to requests for custodial records relating to the FDR and the serial bit stream. The NTSB claims the serial bit stream does not exist without further clarification and the FBI invokes 5 U.S.C. § 552(b)(7)(A)

91. The FBI denied the existence of video tapes in its possession until a judicial review was initiated by Scott Bingham. *S. Bingham v. U. S. Department of Justice*, No. 05-0475 (PLF), (D.D.C. 2006). Of the 85 videos identified by that review in 2006, only 3 have been released to the public.

92. Plaintiff acquired radar data from the United States Air Force for September 11, 2001 in a timely and forthcoming FOIA response. This leads the plaintiff to believe that there is no national security issue involved with the public disclosure of this information. The FAA has to-date been non-responsive to requests for radar or air traffic controller audio data.

93. Plaintiff believes that the defendants are purposely delaying and avoiding the release of these records to the public.

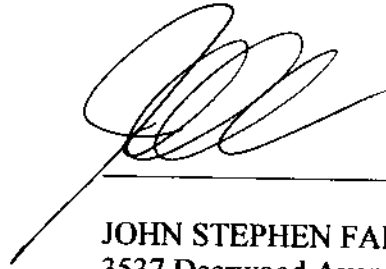
94. Plaintiff has exhausted all remedies to acquire the records sought and now feels that judicial review is the only avenue for relief available.

Requested Relief

WHEREFORE, plaintiff prays this Court:

- A. order defendants to disclose the requested records in their entireties and make copies available to plaintiff;
- B. provide for expeditious proceedings in this action;
- C. award plaintiff its costs and reasonable fees incurred in this action; and
- D. grant such other relief as the Court may deem just and proper.

Respectfully submitted,



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